Patent Application
Attorney Docket No.10408A

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By _____
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A. David Joran (Reg. No. 37,858)
(Typed or printed name of person)

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

IN RE APPLICATION OF: SUSAN B. SOBOLOV-JAYNES :

APPLICATION NO.: 09/707,320 : Examiner: Jarvis, W.

FILING DATE: November 7, 2000 : Group Art Unit: 1614

TITLE: COMBINATION TREATMENT FOR DEPRESSION AND ANXIETY :

Commissioner for Patents
Washington, D.C. 20231

Sir:

COMMUNICATION

This Communication is submitted in response to the Office Action issued on October 16, 2001 in connection with the above-identified application. A response is due December 16, 2001, with a one-month extension of time. A petition for a one-month extension is being concurrently submitted. Accordingly, this Communication is being timely filed.

RESTRICTION REQUIREMENT

In the Office Action, the Examiner restricted the claims under 35 U.S.C. §121 to six inventive Groups as follows:

I. Claims 2 and 10 drawn to a pharmaceutical composition and method of treating depression and anxiety with (a) an anxiolytic or antidepressant agent and (b) a CNS-penetrant NK-1 antagonist;

II. Claims 3 and 13 drawn to a pharmaceutical composition and method of

treating depression and anxiety with (a) an anxiolytic or antidepressant agent and (b) a CNS-penetrant NK-1 antagonist;

III. Claims 4 and 11 drawn to a pharmaceutical composition and method of treating depression and anxiety with (a) an anxiolytic or antidepressant agent and (b) a CNS-penetrant NK-1 antagonist;

IV. Claims 5 and 14 drawn to a pharmaceutical composition and method of treating depression and anxiety with (a) an anxiolytic or antidepressant agent and (b) a CNS-penetrant NK-1 antagonist;

V. Claims 6 and 15 drawn to a pharmaceutical composition and method of treating depression and anxiety with (a) an anxiolytic or antidepressant agent and (b) a CNS-penetrant NK-1 antagonist; and

VI. Claims 7 and 16 drawn to a pharmaceutical composition and method of treating depression and anxiety with (a) an anxiolytic or antidepressant agent and (b) a CNS-penetrant NK-1 antagonist.

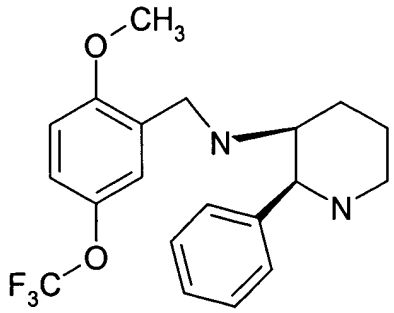
The Examiner contended that these Groups represent inventions which are distinct over each other for the reasons set forth in the Office Action, and concluded that restriction for examination purposes is proper since they have acquired a separate status in the art as shown by their different classifications and a separate search would be required for each non-elected Group.

In response to the restriction election requirement, applicants hereby elect Group I, with traverse. However, applicants respectfully disagree with the restriction requirement on the ground that it is improper since prosecution of the restricted subject matter in a single application would not place a serious burden on the Examiner. MPEP §803. According to MPEP §803, the Examiner may impose a group restriction when (1) the inventions are independent or distinct as claimed and (2) where there is a serious burden on the Examiner if restriction is not required. Since the core subject matter recited in non-elected Groups II-VI are necessarily related to, or otherwise functionally connected with, that of elected Group I, relevant prior art for all Groups would likely be found in the same place, and therefore, no added burden is imposed on the Examiner to search non-elected Groups II-VI.

Accordingly, applicants respectfully request reconsideration and withdrawal of the restriction requirement, and rejoinder of non-elected Groups II-VI with elected

Group I.

The Examiner further requires that applicant elect a single disclosed species from the elected group, including a compound from each of (a) and (b). In response, applicant elects the following structure for the NK-1 receptor antagonist:



For the species of (b), applicant elects sertraline.

Applicants respectfully submit that the pending claims are allowable, and solicit the issuance of a notice to such effect. If a telephone interview is deemed to be helpful to expedite the prosecution of the subject application, the Examiner is invited to contact applicants' undersigned attorney at the telephone number provided.

No fee, other than the fee for a Petition for an Extension of Time, is believed to be necessary in connection with this Communication. Authorization, however, is hereby provided to charge any fee deemed required, or to credit any overpayment, to Deposit Account No. 16-1445.

Respectfully submitted,

Date: November 30, 2001

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